



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0242; FRL-9910-25-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Wisconsin; Revisions to PSD and NNSR Programs**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to its authority under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP), submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on March 12, 2014, for parallel processing. The SIP revision modifies the definition of the term "major modification" in Wisconsin's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. The changes made to the definition of major modification remove an NSR exemption for fuel changes as major modifications where the source was capable of accommodating the change before January 6, 1975. Additionally, the submittal modifies Wisconsin's PSD program to identify precursors for ozone. WDNR requested these revisions to match Federal requirements. EPA is proposing approval of Wisconsin's March 12, 2014, SIP revision because the Agency has made the

preliminary determination that this SIP revision is in accordance with the CAA and applicable EPA regulations regarding PSD and NNSR.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2014-0242, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: damico.genevieve@epa.gov.
3. Fax: (312)385-5501.
4. Mail: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2014-0242. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the SUPPLEMENTARY INFORMATION section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andrea Morgan, Environmental Engineer, at (312)353-6058 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6058, Morgan.andrea@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Is the Background for This Proposed Action?
- III. Wisconsin's Submittal for Parallel Processing.
- IV. What Is EPA's Analysis of Wisconsin's Proposed SIP Revision?
- V. What Action Is EPA Taking?
- VI. Statutory and Executive Order Reviews.

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

- 1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- 2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- 3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- 4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Is the Background for This Proposed Action?

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 8, 2005 (see 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify nitrogen oxides (NO_x) as a precursor to ozone (70 FR 71612 at 71679, 71699-71700).

In a June 17, 2009, letter, EPA notified WDNR that the definition of the term "major modification" in NR 405.02 was inadequate because it failed to identify permits issued under

Federal authority. Wisconsin's PSD program was approved into its SIP on June 28, 1999. Prior to that, PSD construction permits were issued under Federal authority. When NR 405.02(21)(b)5., was written the references to Federal authority were inadvertently omitted. Because the Federal citations were omitted from the rule, EPA identified that in limited situations, the state definition could allow a source to make a change to use a different fuel or raw material without undergoing major new source permit review for the change, even though the change could be prohibited under a Federal permit.

III. Wisconsin's Submittal for Parallel Processing.

On March 12, 2014, WDNR submitted a draft SIP revision request to EPA to revise portions of its PSD and NNSR programs. Once finalized, approval of this SIP revision request will make the Wisconsin SIP consistent with the Federal PSD and NNSR rules. Wisconsin submitted revisions to its rules NR 400, 405, and 408 of the Wisconsin Administrative Code. The submittal requests that EPA approve the following revised rules into Wisconsin's SIP: (1) NR 400.02(123m) and (124); (2) NR 405.02(21)(b)5.a. and b. and 6; (3) NR 405.02(25i)(a); (4) NR 405.02(25i)(ag) and (ar)1-3; and, (5) NR 408.02(20)(e) 5.a and b. and 6. At this time EPA is only proposing to take action on the portions that pertain to the definition of "major

modification" and explicitly identify NO_x as a precursor to ozone. Specifically, today's proposed rulemaking is limited to the following provisions: (1) NR 405.02(21)(b)5.a. and b. and 6; (2) NR 405.02(25i)(a); (3) NR 405.02(25i)(ar)(intro) and 1.; and, (4) NR 408.02(20)(e) 5.a and b. and 6. The remainder of WDNR's submission as it relates to the identification of precursors to particulate matter of less than 2.5 micrometers (PM_{2.5}) and the definition of PM_{2.5} and particulate matter of less than 10 micrometers will be addressed in a separate rulemaking.

Because this SIP revision is not yet effective at the state level, Wisconsin requested that EPA "parallel process" the SIP revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before concluding its rulemaking process. EPA reviews this proposed state action and prepares a proposed rulemaking action. EPA publishes this proposed rulemaking in the Federal Register and solicits public comment in approximately the same timeframe during which the state finalizes its rulemaking process.

After Wisconsin submits the formal fully adopted SIP revision request, EPA will prepare a final rulemaking action for the SIP revision. If changes are made to the SIP revision after

EPA's proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA will repropose the action.

IV. What Is EPA's Analysis of Wisconsin's Proposed SIP Revision?

EPA has evaluated WDNR's proposed revision to the Wisconsin SIP in accordance with the Federal requirements governing state permitting programs. As discussed below, EPA is proposing to approve these revisions because they meet Federal requirements.

EPA regulations contained at 40 CFR 51.166(b)(2)(iii)(e)(1) and (2) and (f) specifically prescribe when use of an alternative fuel or change in hours of operation is not considered a physical change for purposes of defining a "major modification" under the PSD program. WDNR's revisions to the definition of "major modification" in its PSD program in NR 405.02(21)(b)5.a and b. and 6 are consistent with the Federal requirements. EPA has similar regulations for its NNSR program contained at 40 CFR 51.165(a)(1)(v)(C)(5) and (6), and WDNR has revised NR 408.02(20)(e)5.a. and b. and 6 to be consistent with these Federal regulations. Therefore, EPA finds Wisconsin's revisions to the definition of "major modification" in its PSD and NNSR program to be approvable.

WDNR's requested revision to the definition of "regulated NSR air contaminant" in 405.02(25i)(a) and (25i)(ar) and (ar)1

are consistent with the explicit identification of the precursors to ozone in the definition of "regulated NSR air contaminant", codified at 40 CFR 51.166(b)(49)(i)(b), therefore, we find the revisions to be approvable.

V. What Action Is EPA Taking?

EPA is proposing to approve WDNR's March 12, 2014, revisions to: Wisconsin rules NR 405.02(21)(b)5.a. and b. and 6; NR 405.02(25i)(a); NR 405.02(25i)(ar)(intro) and 1.; and, NR 408.02(20)(e) 5.a and b. and 6. into the SIP. As described above, these revisions are consistent with EPA's own regulations with respect to the definitions of "major modification" and "regulated NSR air contaminant".

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Ozone, Reporting and recordkeeping
requirements.

Dated: April 22, 2014.

Susan Hedman,
Regional Administrator, Region 5.

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